BERTAM CONSOLIDATED RUBBER CO. LTD.

v.

THE COLLECTOR OF LAND REVENUE PROVINCE WELLESLEY NORTH BUTTERWORTH

FEDERAL COURT, KUALA LUMPUR
SALLEH ABAS CJ (MALAYA)
MOHD. AZMI FJ
SYED AGIL BARAKABAH FJ
[CIVIL APPEAL NO. 289 OF 1982]
14 JANUARY 1984

LAND LAW: *Compulsory acquisition - Compensation - Inadequacy of - Determination of market value - Land Acquisition Act 1960, ss. 8, 38 - National Land Code s. 214A.*

Part of the appellants' oil palm estate near the township of Kepala Batas ("Bertam Estate") was acquired for the purpose of LPN complex for RM12,600.00 per acre. On reference to the High Court under s. 38 of the Land Acquisition Act, 1960, the Collector's award was enhanced to RM15,000 per acre. The appellants were still dissatisfied and appealed, claiming RM20,000 per acre, based on KEMAS Centre acquisition, also affecting Bertam Estate, which had taken place about 9½ months prior to the acquisition in question before the Court.

Held:

[1] KEMAS Centre acquisition award was relevant in determining the market value but adjustments must be made as to size, time factor and other dissimilarities, including that in building potential.

[2] Though the proposed town plan of Kepala Batas was only available for public information after the acquisition of the subject land, the inclusion of the draft town plan in computing the deduction of 30% from that amount awarded for KEMAS was not wrong, especially as other factors were taken into consideration.

[3] There was no authority to support the proposition submitted by the appellants that the part actually acquired, that is, the scheduled land, should be treated for purpose of determining market value as distinct from the remaining land not acquired.

[4] The learned Judge was not wrong in law in taking the constraint imposed by s. 214A of the National Land Code on estate land in determining the market value.

[5] The burden was on the appellants to show that the increase in the award did not represent a fair market value of the scheduled land and this they had failed to discharge.

[Appeal dismissed.]

Case referred to:
Collector of Land Revenue v. Alagappa Chettiar [1971] 1 MLJ 43

Legislation referred to:
Land Acquisition Act 1960, ss. 2(1), 8, 38,78 First Sch. ss. 1, 2(d)
National Land Code Act 56/1965, s. 214A

Other source referred to:
Modern Methods of Valuation of Land, Houses, and Buildings, by Lawrence & Britton, 6th Edn. p. 335

For the appellants - N. Chandran; M/s. Presgrave & Matthews
For the respondent - Mohd. Saari bin Yusoff, Legal Adviser, Penang

JUDGMENT

Mohd. Azmi FJ:

The scheduled land of which the market value is in dispute in this appeal was part of the appellants' oil palm estate near the township of Kepala Batas (hereinafter referred to as "Bertam Estate"). The land acquired for the purpose of LPN complex was approximately 20 acres which was small in size compared to the 5,000 total acreage of Bertam Estate. The relevant date for determining the market value by virtue of s. 8 acquisition under the Land Acquisition Act, 1960 was **19 June 1980**. Relying on Encik Fernandez's valuation report, the Collector of Land Revenue made an award of RM12,600 per acre both for Lot 2014 and Lot 185 - the two lots affected by the acquisition. The appellants objected to the award and referred it to the Penang High Court under s. 38 of the Act. Abdul Razak J sitting with two Assessors enhanced the Collector's award to RM15,000 per acre. The appellants are, however, still dissatisfied with the enhanced award and before us it is contended that the compensation should have been increased to RM20,000 per acre, based on KEMAS Centre acquisition which had taken place about 9½ months prior to the present acquisition, also affecting Bertam Estate.

As to the facts, we wish only to recapitulate some of the main features particularly as to the difference in expert opinion between Encik Fernandez (DW1) for the respondent and Mr. Loh Soong Chew (PW1) for the appellants. The subject land was situated to the right of the main road as one proceeded from Butterworth towards Alor Star and it was about two miles after the town of Kepala Batas. Its road frontage was Jalan Lahar Ikan Mati, which was some distance away from the main road (see plan, Appendix 'A' to Encik Fernandez's report). The detailed description and location of the subject land had been fully set out in Encik Fernandez' report and quoted extensively by the learned Judge in his judgment, and there is no necessity for us to reproduce them here. The Collector's award of RM12,600 was based on Encik Fernandez's valuation of the land as agricultural-user subject to the constraint placed by s. 214A of the National Land Code which sought to control fragmentation of estate land. Encik Fernandez's was of the opinion that since there was no evidence of sales of comparable lands to serve as a basis for determining the market value, and no evidence of sales of agricultural estates of similar size in the neighbourhood, in arriving at his valuation, he took the following main factors into consideration:

(i) being estate land it was subject to the constraint of s. 214A of the National Land Code;

(ii) although the subject land was under mature oil palm, its location outside the zone earmarked for development rendered its development potential very remote;

(iii) the subject land road frontage was Jalan Lahar Ikan Mati and not the Butterworth/Alor Star main road;

(iv) it was two miles away from Kepala Batas town;

(v) previous awards between RM8,000 and RM20,000 per acre, made and accepted by the owners in recent acquisitions affecting other estate land in the vicinity and Bertam Estate itself *viz*:

Material date of acquisition	**Area acquired**

(1)	Malakoff Estate (to the south of Bertam Estate) at RM8,000 per acre	13.9.1979	1 acre
(2)	Choong Lye Hock Estate (adjoining Malakoff Estate) at RM6,500 per acre	13.9.1979	10 acres
(3)	Bertam Estate at RM12,000 per acre (for low-cost housing)	7.9.1979	9 acres
(4)	Bertam Estate at RM20,000 per acre (for KEMAS Centre)	30.8.1979	2 acres
(5)	Bertam Estate at RM11,400 per acre (for road construction)	13.9.1979	18 acres

On the other hand, Mr. Loh for the appellant made separate valuation for the scheduled land and its oil palm. In his opinion, for each acre RM16,000 should be the market value for the land and RM6,500 for the crop. The learned Judge did not find any difficulty in rejecting this double accounting method of valuation. We agree that when the scheduled land is valued on the basis of agricultural land with its development potential added, separate valuation should not be made for its crops in determining market value of the acquired land. Mr. Loh's approach to valuation was also a novel one, in that he artificially treated the 20 acres of subject land as if it was distinct with separate title from the remaining 4,980 acres in Bertam Estate. He could not however find any evidence of sales of 20 acres of land from an estate of comparable size as Bertam Estate. He therefore relied on sales of estate land in Sungai Siput, Parit Buntar, Sungai Petani, Nibong Tebal and Simpang Ampat - all of which were not in the vicinity or neighbourhood of the land acquired. The appellants' valuation was rejected by the learned Judge as he found the evidence of sales relied upon by Mr. Loh (PW1) was unreliable. In considering the three previous acquisition awards in respect of Bertam Estate, the learned Judge reminded himself of what was stated at page 205 of *Aggrawalla*, 3rd Edition, which says that evidence of previous acquisition awards which were accepted are relevant to show the market value, and that prices which are given by the Collector to people whose lands are acquired and who accepted them are valuable evidence in ascertaining the market value of the property. Although he rejected Mr. Loh's valuation, he held in favour of the appellants by enhancing the Collector's award from RM12,600 to RM15,000 per acre. In doing so he used KEMAS Centre acquisition on 30 August 1979 as the cornerstone of his valuation. As set out above, KEMAS Centre was acquired at RM20,000.00 per acre from the appellants. The two acres KEMAS Centre just as the 20 acres of subject land formed part of Bertam Estate. In our view, KEMAS Centre acquisition award which was offered and accepted by the appellants is relevant in determining the market value, but adjustments must be made as to size, time factor and other dissimilarities between the land previously acquired and the subject land. This the learned Judge had sufficiently done. He had warned himself against using the previous acquisition exclusively and ignoring all other considerations in determining the market value. In taking KEMAS as the basis of valuation he gave allowances for all dissimilarities. Thus, he took into account not only dissimilarity in size but also dissimilarity in location although both lands formed part of Bertam Estate - Kemas being virtually in Kepala Batas town and whereas the subject land was about two miles away. Further, KEMAS was

within the draft town plan and whereas the subject land was outside it and therefore not zoned for development. For these dissimilarities, the learned Judge made a deduction of 30%, and for the difference in time of acquisition date he added 5% because KEMAS was acquired about 9½ months earlier. The increased valuation of RM15,000 was therefore arrived at by deducting 25% from RM20,000, the award made to KEMAS on 30 August 1979.

What is the respective function of the High Court and the Federal Court relating to claims for compensation under the Land Acquisition Act, 1960? For this we need only refer to the decision of the Privy Council in *Collector of Land Revenue v. Alagappa Chettiar* [1971] 1 MLJ 43 at 44. At page 44 Lord Diplock has this to say:

> The appeal to the Federal Court Under s. 49 of the Land Acquisition Act 1960 is like any other civil appeal, by way of re-hearing. The Federal Court is entitled to review the inferences and conclusion of the High Court and to draw its own inferences and conclusions: *Aik Hoe & Co. Ltd. v. Superintendent of Lands and Surveys.* But where the inferences and conclusions of the High Court are based upon findings of primary fact which are dependent upon the credibility of the oral evidence of witnesses whom the trial Judge alone has had the advantage of hearing and seeing, an appellate Court ought to accept the High Court's findings of primary fact save in very exceptional cases. Similarly where expert oral evidence of valuers has been called at the trial and discloses a conflict of opinion between them, the Judge's finding as to which he regarded as most reliable is entitled to considerable weight though it is less sacrosanct than his findings of pure fact which are dependent upon his view of whether or not particular witnesses were telling the truth. Finally, their Lordships would observe that land valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessments of damages or against apportionment of blame in actions for negligence an appellate Court ought not to reject the Judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the Judge's assessment must be wrong.

From the memorandum of appeal and the argument before us, it is clear that the appellants are no longer relying on the various sales of estate land referred to by Mr. Loh in his report, and that they seem to have conceded that separate valuation for the land and the crop should not be made. They are now prepared, it seems, to accept the learned Judge's adoption of KEMAS acquisition as a basis for arriving at a fair market value. Indeed, to be fair to Mr. Loh, he did state in his valuation report under 'the heading "Conclusion" that "if evidence of transactions within Kepala Batas and the immediate area are used, adjustments have to be made for differences in location and distance from urban development".

The appellants' main complaint is therefore not so much in the adoption of KEMAS acquisition as a basis of valuation, as the inclusion of draft town plan of Kepala Batas (Exhibit D3) in computing the deduction of 30%. It is the appellants' argument that since the proposed town plan was only available for public information after July, 1980, according to the testimony of the Technical Assistant Town Planning, Kepala Batas Town Council (DW2), the town plan consideration was totally irrelevant, and based on KEMAS, the Collector's award should have been enhanced to RM20,000 per acre. It is true that the acquisition date of the subject land was prior to July 1980 and the Judge was aware of it and dealt with the matter in some detail. We think he had dealt with it sufficiently when he said in his judgment:

> According to DW2 it had already been drawn in 1978. I expect the public would have seen it in 1980 by the time of the *gazette*. I think that was the purpose of DW2 saying that although the plan was agreed to by Council in 1980 it was drawn 2 years before. I think the only effect of the plan being gazetted is that the Council cannot change it as their whim and fancy dictates without formally degazetting it.

Further, in arriving at the 30% deduction for locational disadvantages, the Judge did not take into consideration only the town plan but he also took into account that KEMAS was virtually in Kepala Batas town whereas the subject land was two miles away. We are of the view that in an era of rapid economic and social developments, estate or agricultural land in this country must necessarily have a development potential particularly when the property is situated in the vicinity of existing town. The development potential can be immediate or remote; the more immediate the potential, the higher would be its market value. In considering how immediate or remote such potential is at the relevant time, regard must be had to all the circumstances including similarities and dissimilarities between the land acquired and comparable lands in the neighbourhood. But the mere fact that the land acquired is located outside an area zoned by Local Authorities for development, cannot by itself deprive it altogether from any development potential. To do so is to pre-suppose that Local Authorities' decisions on zoning which in the main are based on administrative policy and convenience, are permanent and capable of superseding the National Land Code. Be that as it may, having regard to the difference in size, location, and building potential between the KEMAS land and the subject land, we are not prepared to say that the learned Judge was wrong in making a deduction of 30% from the KEMAS acquisition award.

The other ground raised by the appellants is the failure of the learned Judge in treating the 20 acres subject land as distinct from the whole of Bertam Estate of which the scheduled land formed part. Mr. Chandran, Counsel for the appellants, argued that "scheduled land" as defined by the Land Acquisition Act 1960 must mean land actually acquired notwithstanding the nature of the title. For the purpose of valuation it is submitted that the part actually acquired should be treated separately from the remaining land not acquired. As Mr. Chandran himself admits, there is no known authority to support such proposition. Section 2(1) of the Act defines "scheduled land" as meaning "any land or lands included in a schedule prepared under s. 8 and appended to any declaration or notification in Forms D, E, J and K". Before a declaration in Form D is executed, s. 7 provides that the Collector shall prepare and submit to the State Authority - (a) a plan of the whole area of such lands, showing the particular lands, or **parts thereof**, which it will be necessary to acquire; and (b) a list of such lands, in Form C. It is clear that the definition of "scheduled land" does not deal with any aspect of method or mode of valuation. Similarly, s. 1 of the First Schedule to the Act merely provides the relevant date when market value of "scheduled land" should be determined, but it does not provide for particular method of determining the market value. There is nothing in the Act to say that "scheduled land" should be treated for purpose of determining market value, as distinct from the remaining land not acquired, where it forms part of a bigger parcel of land; nor is there anything to prohibit consideration being given to the size, nature and use of the remaining land of which the "scheduled land" forms part. It is indeed difficult to imagine how a proper and fair valuation can be arrived at if the subject land in this appeal were valued as a separate parcel unrelated to the 4,980 remaining acres in Bertam Estate (see *Modern Methods of Valuation of Land, Houses, and Buildings*, by Lawrence & Britton, 6th Edn. page 335). In determining the amount of compensation to be awarded to any "scheduled land", s. 2(d) of the First Schedule to the Act provides for damages for severance if by reason of the acquisition it affects injuriously the owner's remaining property. This is a clear recognition by the Act that where only part of a parcel of land is acquired, the remaining part of the land which is not acquired must necessarily be considered for the purpose of determining market value. In the present appeal, since appellants' valuation report (Exhibit B1 at pages 21 and 32) did not recommend for damages for severance, it is reasonable to assume that the remaining 4,980 acres of appellants' estate could not have been injuriously

affected by the acquisition of the subject land.

It is also contended on behalf of the appellants that it was wrong for the learned Judge to take into account the constraint imposed by s. 214A of the National Land Code in determining the market value. Section 214A has the effect of prohibiting any transfer, conveyance or disposal in any manner of estate land unless approval is obtained first from the Estate Land Board. The object of this section is to prevent fragmentation of estate land like Bertam Estate without due consideration being given to social and economic consequences to the country. Although the constraint could be removed by application to the Estate Land Board, at the material date the subject land was not free from that legal as opposed to administrative constraint. As such the learned Judge was not wrong in law in taking it into consideration. Indeed, in examination-in-chief, Mr. Loh testified that in arriving at his valuation he gave 20% deduction for the effect of s. 214A NLC. But on perusing his valuation report he appears to have omitted to do so. If the 20% were deducted from his land valuation of RM16,000 per acre, it would reduce his own valuation to RM12,800. There is therefore no merit in this appeal. If the learned Judge had erred at all it was on the side of generosity.

The appellants being the party claiming enhanced compensation must show to this Court the increase in the award made by the learned Judge does not represent a fair market value of the scheduled land. We find the appellants have failed to discharge this burden. Having regard to all the evidence, we do not consider the Judge's valuation of RM15,000 per acre as inadequate, or wrong in fact or law. We therefore dismiss this appeal with costs.

Also found at [1984] 1 CLJ 69